IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7924 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FIT & FIRM HEALTH CENTRE THR' ITS PROPRETRESS - Petitioner(s)

Versus

JT.REGISTRAR & MEMMBER & 5 - Respondent(s)

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Appearance :
DR MAHESH THAKAR for Petitioner(s) : 1,MS MONA N TRIVEDI for Petitioner(s) : 1,
MR HEMANG PARIKH AGP for Respondent(s) : 1,5
MR BS PATEL for Respondent(s) : 2,
MRS RANJAN B PATEL for Respondent(s) : 2,
NOTICE NOT RECD BACK for Respondent(s) : 5,
UNSERVED-WANT OF TIM for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 04/12/2007

ORAL JUDGMENT

1. This petition has been filed with the following prayers:

> *18. The petitioner therefore prays that:-*
>
> *(a) Be pleased to admit this petition.*
>
> *(b) Be pleased to declare that the provisions of section 96 and 99(4) of Gujarat Co-operative Societies Act, to the extent of entertaining suit filed by cooperative Banks after action under the Securitisation Act, involving sum of more than Rs.10.00 lacs being in direct conflict with the provisions of section 13 rule 11 of Securitisation Act and section 1(4), 17, 18, 34(1) of Recovery of Debts Due to Banks and Financial Institutions Act are unconstitutional, ultra virus and liable to be set aside.*
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> *(c) Be pleased to quash and set aside the impugned order passed by learned Board of Nominee to proceed with the matter and assume jurisdiction despite the position*

that the full bench of Bombay High Court has on identical provision ruled that Board of Nominee have no jurisdiction and the Hon'ble Supreme Court is yet to finally decide the matter.

(d) Be pleased to stay the proceedings pending before learned Board of Nominee being Lavad Case No.951 of 2005 pending hearing and disposal of this petition.

(e) Any other relief deemed fit in interest of justice.

2. The petitioner having given-up the challenge to vires of Sections 96 and 99(4) of the Gujarat Co-operative Societies Act, 1961, the matter which was placed before the Division Bench of this Court was directed to be placed before an appropriate Bench and hence, had come up for hearing before this Court. On 21.02.2007 after hearing the parties an order came to be made admitting the petition by recording as under:-

"3 Heard the learned Advocate for the petitioner. The principal submission on behalf of the petitioner is that

respondent No. 2 – Bank initiated action under the Provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and took possession of properties of the petitioner in accordance with the provisions of the said Act. The properties were disposed off and thereafter due to short fall in the amount recovered vis-a-vis the total outstanding liability respondent No. 2- Bank filed Lavad Suit No. 951 of 2005 before the Board of Nominees for recovery of the balance outstanding dues. On 25.10.2005 an application came to be moved praying for deciding of preliminary issue on the ground of jurisdiction of the Board of Nominees to entertain the suit. Vide order dated 24.3.2006 the Board of Nominees has rejected the application raising the preliminary issue.

4 As can be seen from the facts recorded by the Board of Nominees in the impugned order dated 24/3/2006 the judgment of Bombay High Court in the case of Narendra Kantilal Shah V/s. Joint Registrar, Co-operative Societies, Bombay and others, AIR 2004(Bom.) 166 was pressed into service on behalf of the petitioner. As against that, on behalf of respondent No.2 – Bank order dated 16/1/2004 made by the Apex Court in petition for Special Leave to Appeal (Civil) No. 886 of 2004 was pressed into service to point out that the operation of the judgment of Bombay High Court has been stayed by the

Apex Court. Considering the aforesaid facts the Board of Nominees has come to the conclusion that in the circumstances there is no judgment which states that the Board of Nominees cannot exercise jurisdiction under provisions of Section 99(4) of the Cooperative Societies Act and hence, application Exhibit 21 relating to preliminary issue of jurisdiction has been rejected.

5 On behalf of the parties the only statement made at the hearing is that the Apex Court has heard the pending matter against the judgment of Bombay High Court and decision is awaited. In the aforesaid set of facts and circumstances it is apparent that the matter deserves consideration with special reference to provisions of Sections 18 & 17 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 read with Rule 11 of the Security Interest (Enforcement) Rules, 2002. Hence ***Rule".***

3. Today the learned advocate for respondent No. 2 has placed on record a copy of the Judgment rendered by the Apex Court in the case of *Greater Bombay Co-Op. Bank Ltd. V/s. M/s. United Yarn Tex. Pvt. Ltd. & Ors.* 2007(5) SCALE 366 to point out that the Apex Court has held that provisions of Recovery Of Debts Due to Banks and Financial Institutions Act,

1993 by invoking the doctrine of incorporation are not applicable to the recovery of dues by the Co-operative Societies from their members.

4. The learned advocate for the petitioner states that in-fact no debt exist and hence, there can be no question of seeking any recovery.

5. As noted hereinbefore the petition has been filed at a stage when the application moved by the petitioner relating to preliminary issue of jurisdiction (Exh.21) had been rejected by the Board of Nominees. The suit filed before the Board of Nominees is admittedly yet pending. In the aforesaid circumstances it is not possible to enter into any examination of merits of the submissions made on behalf of the petitioner.

7. In light of the Judgment of Apex Court in the case of *Greater Bombay Co-Op. Bank Ltd.* (supra) it is apparent that Board of Nominees has rightly rejected application Exh. 21 by holding that the

Board of Nominees had jurisdiction to proceed with the Summary Lavad Suit. The petition is therefore rejected. Rule discharged. There shall be no order as to costs.

(D.A.MEHTA, J.)

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